

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT ENACTING A 4 PERCENT SALES TAX AND USE TAX ON THE RETAIL SALE OF GOODS; ALLOWING CERTAIN SALES TAX AND USE TAX EXEMPTIONS, INCLUDING UNPREPARED FOOD ITEMS, MEDICAL ITEMS, DRUGS, AND UTILITIES; AUTHORIZING THE DEPARTMENT OF REVENUE TO ENTER INTO THE STREAMLINED SALES AND USE TAX AGREEMENT; IMPLEMENTING APPROPRIATE PROVISIONS OF THE STREAMLINED SALES AND USE TAX AGREEMENT; PROVIDING FOR A REFUNDABLE INCOME TAX CREDIT; AMENDING SECTIONS 15-68-101, 15-68-102, 15-68-110, 15-68-201, 15-68-202, 15-68-206, 15-68-207, 15-68-401, 15-68-402, 15-68-405, 15-68-501, 15-68-502, 15-68-505, 15-68-510, AND 15-68-801, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-68-101, MCA, is amended to read:

"15-68-101. Definitions. For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Accommodations" means a building or structure containing individual sleeping rooms or suites that provides overnight lodging facilities for periods of less than 30 days to the general public for compensation.

(b) Accommodations includes a facility represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, or bed and breakfast facility.

(c) The term does not include a health care facility, as defined in 50-5-101, any facility owned by a corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under 18 years of age for camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under 2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

~~(2) (a) "Admission" means payment made for the privilege of being admitted to a facility, place, or event.~~

~~(b) The term does not include payment for admittance to a movie theater or to a sporting event~~

~~sanctioned by a school district, college, or university.~~

(2) "Agreement" means the Streamlined Sales and Use Tax Agreement provided for under [sections 35 through 42].

(3) "Alcoholic beverages" means beverages that are suitable for human consumption and contain 1/2 of 1% or more of alcohol by volume.

~~(3)(4)~~ (a) "Base rental charge" means the following:

(i) charges for time of use of the rental vehicle and mileage, if applicable;

(ii) charges accepted by the renter for personal accident insurance;

(iii) charges for additional drivers or underage drivers; and

(iv) charges for child safety restraints, luggage racks, ski racks, or other accessory equipment for the rental vehicle.

(b) The term does not include:

(i) rental vehicle price discounts allowed and taken;

(ii) rental charges or other charges or fees imposed on the rental vehicle owner or operator for the privilege of operating as a concessionaire at an airport terminal building;

(iii) motor fuel;

(iv) intercity rental vehicle drop charges; or

(v) taxes imposed by the federal government or by state or local governments.

~~(4)(5)~~ (a) "Campground" means a place used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.

(b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more.

(6) (a) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces.

(b) The term does not include any preparation that contains flour and that requires refrigeration.

(7) "Certified automated system" has the meaning provided in [section 36].

(8) "Certified service provider" has the meaning provided in [section 36].

(9) "Computer" means an electronic device that accepts information in a digital or similar form and manipulates it for a result based on a sequence of instructions.

1 (10) "Computer software" means a set of coded instructions designed to cause a computer or automatic
2 data processing equipment to perform a task.

3 (11) "Delivery charges" means charges by the seller of personal property or services for preparation and
4 delivery to a location designated by the purchaser of personal property or services, including but not limited to
5 transportation, shipping, postage, handling, crating, and packing.

6 (12) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

7 (a) contains one or more of the following dietary ingredients:

8 (i) a vitamin;

9 (ii) a mineral;

10 (iii) an herb or other botanical;

11 (iv) an amino acid;

12 (v) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake;

13 or

14 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient described in
15 subsections (12)(a)(i) through (12)(a)(v);

16 (b) is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form or, if not intended
17 for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole
18 item of a meal or of the diet; and

19 (c) is required to be labeled as a dietary supplement, identifiable by the "supplemental facts" box found
20 on the label and as required pursuant to 21 CFR 101.36.

21 (13) "Drug" means a compound, substance, or preparation and any component of a compound,
22 substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

23 (a) recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the
24 United States, or official National Formulary and any supplement to them;

25 (b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

26 (c) intended to affect the structure or any function of the body.

27 (14) (a) "Durable medical equipment" means equipment, including repair and replacement parts for
28 equipment, that:

29 (i) can withstand repeated use;

30 (ii) is primarily and customarily used to serve a medical purpose;

1 (iii) generally is not useful to a person in the absence of illness or injury; and

2 (iv) is not worn in or on the body.

3 (b) The term does not include mobility-enhancing equipment.

4 (15) "Electronic" means technology that relates to having electrical, digital, magnetic, wireless, optical,
5 electromagnetic, or similar capabilities.

6 ~~(5)(16)~~ "Engaging in business" means carrying on or causing to be carried on any activity with the
7 purpose of receiving direct or indirect benefit.

8 (17) (a) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen,
9 dried, or dehydrated form, that are sold for ingestion or chewing by humans and that are consumed for their taste
10 or nutritional value.

11 (b) The term does not include alcoholic beverages, candy, dietary supplements, soft drinks, or tobacco.

12 (18) "Food sold through vending machines" means food dispensed from a machine or other mechanical
13 device that accepts payment.

14 (19) "Grooming and hygiene products" means soaps and cleaning solutions, shampoo, toothpaste,
15 mouthwash, antiperspirants, and suntan lotions and sunscreens, regardless of whether the items meet the
16 definition of over-the-counter drugs.

17 ~~(6)(20)~~ (a) "Lease", "leasing", or "rental" means any transfer of possession or control of tangible
18 personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options
19 to purchase or extend.

20 (b) Lease or rental includes agreements covering motor vehicles and trailers when the amount of
21 consideration may be increased or decreased by reference to the amount realized upon sale or disposition of
22 the property, as defined in 26 U.S.C. 7701(h)(1).

23 (c) The term does not include:

24 (i) a transfer of possession or control of property under a security agreement or deferred payment plan
25 that requires the transfer of title upon completion of the required payments;

26 (ii) a transfer of possession or control of property under an agreement that requires the transfer of title
27 upon completion of required payments and payment of an option price that does not exceed the greater of \$100
28 or 1% of the total required payments; or

29 (iii) providing tangible personal property with an operator if an operator is necessary for the equipment
30 to perform as designed and not just to maintain, inspect, or set up the tangible personal property.

(d) This definition must be used for sales tax and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Montana Uniform Commercial Code, or other provisions of federal, state, or local law.

(e) This definition must be applied only prospectively from the date of adoption and has no retroactive impact on existing leases or rentals.

(21) "Maintaining an office or other place of business" means:

(a) a person having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or place of business; or

(b) an agent operating within this state under the authority of the person or its subsidiary, whether the place of business or agent is located within the state permanently or temporarily or whether or not the person or its subsidiary is authorized to do business within this state.

(22) (a) "Manufacturing" means combining or processing components or materials, including the processing of ores in a mill, smelter, refinery, or reduction facility, to increase their value for sale in the ordinary course of business.

(b) The term does not include construction.

(23) (a) "Mobility-enhancing equipment" means equipment, including repair and replacement parts, that:

(i) is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either in a home or in a motor vehicle;

(ii) is not generally used by persons with normal mobility; and

(iii) does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(b) The term does not include durable medical equipment.

~~(7)~~(24) (a) "Motor vehicle" means a light vehicle as defined in 61-1-139, a motorcycle as defined in 61-1-105, a motor-driven cycle as defined in 61-1-106, a quadricycle as defined in 61-1-133, a motorboat or a sailboat as defined in 23-2-502, or an off-highway vehicle as defined in 23-2-801 that:

(i) is rented for a period of not more than 30 days;

(ii) is rented without a driver, pilot, or operator; and

(iii) is designed to transport 15 or fewer passengers.

(b) Motor vehicle includes:

(i) a rental vehicle rented pursuant to a contract for insurance; and

(ii) a truck, trailer, or semitrailer that has a gross vehicle weight of less than 22,000 pounds, that is rented without a driver, and that is used in the transportation of personal property.

(c) The term does not include farm vehicles, machinery, or equipment.

(25) (a) "Over-the-counter drug" means a drug that has a label that identifies the product as a drug, as required by 21 CFR 201.66.

(b) An over-the-counter drug label includes:

(i) a drug facts panel; or

(ii) a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation.

(c) The term does not include grooming and hygiene products.

~~(8) "Permit" or "seller's permit" means a seller's permit as described in 15-68-401.~~

~~(9)~~(26) "Person" means an individual, estate, trust, fiduciary, corporation, partnership, limited liability company, limited liability partnership, or any other legal entity.

(27) (a) "Prepared food" means:

(i) food sold in a heated state or heated by the seller;

(ii) two or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

(b) The term does not include food that is only cut, repackaged, or pasteurized by the seller and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer, as recommended by the United States food and drug administration in chapter 3, part 401.11, of its Food Code, so as to prevent food-borne illnesses.

(28) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a licensed practitioner as authorized by the laws of Montana.

(29) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts, worn on or in the body to:

(a) artificially replace a missing portion of the body;

(b) prevent or correct a physical deformity or malfunction; or

(c) support a weak or deformed portion of the body.

~~(40)~~(30) "Purchaser" means a person to whom a sale of personal property is made or to whom a service

1 is furnished.

2 (31) "Registration" or "seller's registration" means a seller's registration as described in 15-68-401.

3 ~~(11)~~(32) "Rental vehicle" means a motor vehicle that is used for or by a person other than the owner of
4 the motor vehicle through an arrangement and for consideration.

5 ~~(12)~~(33) "Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease,
6 or subrent.

7 ~~(13)~~(34) "Sale" or "selling" means the transfer of property for consideration or the performance of a
8 service for consideration.

9 ~~(14)~~(35) (a) "Sales price" applies to the measure subject to sales tax and means the total amount or
10 consideration, including cash, credit, property, and services, for which personal property or services are sold,
11 leased, or rented or valued in money, whether received in money or otherwise, without any deduction for the
12 following:

13 (i) the seller's cost of the property sold;

14 (ii) the cost of materials used, labor or service costs, interest, losses, all costs of transportation to the
15 seller, all taxes imposed on the seller, and any other expense of the seller;

16 (iii) charges by the seller for any services necessary to complete the sale, other than delivery and
17 installation charges;

18 (iv) delivery charges;

19 (v) installation charges;

20 (vi) the value of exempt personal property given to the purchaser when taxable and exempt personal
21 property have been bundled together and sold by the seller as a single product or piece of merchandise; and

22 (vii) credit for any trade-in.

23 (b) The amount received for charges listed in subsections ~~(14)(a)(iii)~~ (35)(a)(iii) through ~~(14)(a)(vii)~~
24 (35)(a)(vii) are excluded from the sales price if they are separately stated on the invoice, billing, or similar
25 document given to the purchaser.

26 (c) The term does not include:

27 (i) discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed
28 by a seller and taken by a purchaser on a sale;

29 (ii) interest, financing, and carrying charges from credit extended on the sale of personal property or
30 services if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

1 or

2 (iii) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of
3 sale, or similar document given to the purchaser.

4 (d) In an exchange in which the money or other consideration received does not represent the value
5 of the property or service exchanged, sales price means the reasonable value of the property or service
6 exchanged.

7 (e) When the sale of property or services is made under any type of charge or conditional or time-sales
8 contract or the leasing of property is made under a leasing contract, the seller or lessor shall treat the sales price,
9 excluding any type of time-price differential, under the contract as the sales price at the time of the sale.

10 ~~(15)(36)~~ "Sales tax" and "use tax" mean the applicable tax imposed by 15-68-102.

11 ~~(16)(37)~~ "Seller" means a person that makes sales, leases, or rentals of personal property or services.

12 ~~(17)(38)~~ (a) "Service" means an activity that is engaged in for another person for consideration and that
13 is distinguished from the sale or lease of property. Service includes activities performed by a person for its
14 members or shareholders.

15 (b) In determining what a service is, the intended use, principal objective, or ultimate objective of the
16 contracting parties is irrelevant.

17 (39) (a) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners.

18 (b) The term does not include beverages that contain milk or milk products, soy, rice or similar milk
19 substitutes, or greater than 50% of vegetable or fruit juice by volume.

20 (40) "Tangible personal property" means personal property that can be seen, weighed, measured, felt,
21 or touched or that is in any other manner perceptible to the senses. Tangible personal property includes
22 electricity, water, gas, steam, and computer software.

23 (41) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains
24 tobacco.

25 ~~(18)(42)~~ "Use" or "using" includes use, consumption, or storage, other than storage for resale or for use
26 solely outside this state, in the ordinary course of business."

27
28 **Section 2.** Section 15-68-102, MCA, is amended to read:

29 **"15-68-102. Imposition and rate of sales tax and use tax -- exceptions.** (1) A sales tax of the
30 following percentages is imposed on sales of the following property or services:

1 (a) 4% on all sales of tangible personal property;

2 ~~(a)(b)~~ 3% on accommodations and campgrounds;

3 ~~(b)(c)~~ 4% on the base rental charge for rental vehicles.

4 (2) The sales tax is imposed on the purchaser and must be collected by the seller and paid to the
5 department by the seller. The seller holds all sales taxes collected in trust for the state. The sales tax must be
6 applied to the sales price.

7 (3) (a) For the privilege of using property or services within this state, there is imposed on the person
8 using the following property or services a use tax equal to the following percentages of the value of the property
9 or services:

10 (i) 4% on all sales of tangible personal property;

11 ~~(i)(ii)~~ 3% on accommodations and campgrounds;

12 ~~(ii)(iii)~~ 4% on the base rental charge for rental vehicles.

13 (b) The use tax is imposed on property or services that were:

14 (i) acquired outside this state as the result of a transaction that would have been subject to the sales
15 tax had it occurred within this state;

16 (ii) acquired within the exterior boundaries of an Indian reservation within this state as a result of a
17 transaction that would have been subject to the sales tax had it occurred outside the exterior boundaries of an
18 Indian reservation within this state;

19 (iii) acquired as the result of a transaction that was not initially subject to the sales tax imposed by
20 subsection (1) or the use tax imposed by subsection (3)(a) but which transaction, because of the buyer's
21 subsequent use of the property, is subject to the sales tax or use tax; or

22 (iv) rendered as the result of a transaction that was not initially subject to the sales tax or use tax but that
23 because of the buyer's subsequent use of the services is subject to the sales tax or use tax.

24 (4) For purposes of this section, the value of property must be determined as of the time of acquisition,
25 introduction into this state, or conversion to use, whichever is latest.

26 (5) The sale of property or services exempt or nontaxable under this chapter is exempt from the tax
27 imposed in subsections (1) and (3).

28 ~~—— (6) Lodging facilities and campgrounds are exempt from the tax imposed in subsections (1)(a) and~~
29 ~~(3)(a)(i) until October 1, 2003, for contracts entered into prior to April 30, 2003, that provide for a guaranteed~~
30 ~~charge for accommodations or campgrounds."~~

1
2 **NEW SECTION. Section 3. Credit -- out-of-state taxes.** If a sales tax, use tax, or similar tax has been
3 levied by another state or a political subdivision of another state on property that was bought outside this state
4 but that will be used or consumed within this state and the tax was paid by the current user, the amount of tax
5 paid may be credited against any use tax due this state on the same property. The credit may not exceed the
6 sales tax or use tax due this state.

7
8 **Section 4.** Section 15-68-110, MCA, is amended to read:

9 **"15-68-110. Collection of sales tax and use tax -- listing of business locations and agents --**
10 **severability.** (1) Except when the purchaser has a direct payment permit as provided in [section 8], a person
11 engaging in the business of selling property or services subject to taxation under this chapter shall collect the
12 sales tax from the purchaser and pay the sales tax collected to the department.

13 (2) (a) A person that solicits or exploits the consumer market within this state by regularly and
14 systematically performing an activity within this state and whose sales are not subject to the sales tax shall
15 collect the use tax from the purchaser and pay the use tax collected to the department.

16 (b) "Activity", for the purposes of this section, includes but is not limited to engaging in any of the
17 following within this state:

18 (i) maintaining an office or other place of business that solicits orders through employees or
19 independent contractors;

20 (ii) canvassing;

21 (iii) demonstrating;

22 (iv) collecting money;

23 (v) warehousing or storing merchandise;

24 (vi) delivering or distributing products as a consequence of an advertising or other sales program
25 directed at potential customers;

26 (vii) to the extent permitted by federal law, soliciting orders for property by means of telecommunications
27 or a television shopping system or by providing telecommunications services that use toll or toll-free numbers
28 and that are intended to be broadcast by cable television or other means to consumers within this state;

29 (viii) soliciting orders, pursuant to a contract with a broadcaster or publisher located within this state, for
30 property by means of advertising disseminated primarily to consumers located within this state and only

1 secondarily to bordering jurisdictions;

2 (ix) soliciting orders for property by mail through the distribution of catalogs, periodicals, advertising
3 flyers, or other advertising;

4 (x) soliciting orders, pursuant to a contract with a cable television operator located within this state, for
5 tangible personal property by means of advertising transmitted or distributed over a cable television system
6 within this state; or

7 (xi) participating in an act that benefits from banking, financing, debt collection, telecommunications, or
8 marketing activities occurring within this state or that benefits from the location within this state of authorized
9 installation, servicing, or repair facilities.

10 (3) Multistate registration pursuant to the agreement may not be used as a factor to determine whether
11 the person is conducting an activity within the state subjecting the person to the sales tax or use tax.

12 ~~(2)~~(4) A person engaging in business within this state shall, before making any sales subject to this
13 chapter, ~~obtain a seller's permit~~ register as a seller, as provided in 15-68-401, obtain an electronic point of sale
14 mechanism, as provided in [section 5], and at the time of making a sale, whether within or outside the state,
15 collect the sales tax imposed by 15-68-102 from the purchaser, ~~and~~ give to the purchaser a receipt for the sales
16 tax paid, and record the amount of sale and tax paid using the electronic point of sale mechanism if a taxpayer
17 identification card is presented or reference number is provided by the purchaser at the time of sale in the
18 manner and form prescribed by rule, for the sales tax paid.

19 ~~(3)~~(5) The department may authorize the collection of the sales tax imposed by 15-68-102 by any
20 retailer who does not maintain a place of business within this state but who, to the satisfaction of the department,
21 is in compliance with the law. When authorized, the person shall collect the use tax upon all property and
22 services that, to the person's knowledge, are for use within this state and subject to taxation under this chapter.

23 ~~(4)~~(6) All sales tax and use tax required to be collected and all sales tax and use tax collected by any
24 person under this chapter constitute a debt owed to this state by the person required to collect the sales tax and
25 use tax.

26 ~~(5)~~(7) A person engaging in business within this state that is subject to this chapter shall provide to the
27 department:

28 (a) the names and addresses of all of the person's agents operating within this state; and

29 (b) the location of each of the person's distribution houses or offices, sales houses or offices, and other
30 places of business within this state.

1 ~~(6)~~(8) If any application of this section is held invalid, the application to other situations or persons is
2 not affected."

3
4 NEW SECTION. **Section 5. Electronic point of sales mechanism -- required of sellers -- online**
5 **sales -- database.** (1) A seller holding a seller's registration under 15-68-401 must have an electronic point of
6 sales mechanism approved by the department to transmit information about taxable sales to the department.

7 (2) An electronic point of sales mechanism must be approved by the department and must be capable
8 of:

9 (a) interfacing with a taxpayer identification card issued by the department pursuant to [section 6]; and

10 (b) transmitting data to the department on:

11 (i) the identity of a purchaser, itemized and total taxable sales to the purchaser, and total sales taxes
12 paid by the purchaser;

13 (ii) date and time of the sale;

14 (iii) identity and location of the seller; and

15 (iv) any other information required by the department, including data necessary for corrections of sales
16 and sales tax data such as mistakes, returns, and purchaser nonpayment.

17 (3) Montana sellers making sales subject to Montana sales tax shall collect taxpayer identification on
18 sales to customers not present at the vendor's premises such as those made over the internet or by telephone.

19 A seller shall use an electronic point of sales mechanism approved by the department for entry of the reference
20 number of a taxpayer identification card.

21 (4) The department shall collect the information gathered by point of sale mechanisms for taxpayers
22 to use in determination of individual income tax deductions and credits. The information must be used by the
23 department in the administration of the sales tax and use tax and may be released only to the taxpayer, to an
24 agent of the taxpayer designated in writing, or to a court upon an appropriate order by the court.

25
26 NEW SECTION. **Section 6. Taxpayer identification card.** (1) The department shall issue to each
27 applicant a taxpayer identification card. The card must be readable by a department-approved electronic point
28 of sales mechanism as provided in [section 5] and must have encoded information:

29 (a) specifying the cardholder's tax identification number;

30 (b) reflecting the cardholder's tax identity;

1 (c) necessary for the technical operation of the identification card; and

2 (d) required by the department for the administration of this chapter.

3 (2) The department shall assign unique tax identification cards for each individual, entity, association,
4 or business. A card issued to a juvenile or other individual who does not pay individual income taxes may carry
5 a tax identification card that is linked to or a derivative of the tax identification number of the person who claims
6 the individual as a dependent for income tax purposes. Multiple tax identification cards may be issued to
7 businesses and other entities or associations.

8 (3) A taxpayer identification card must have on the face of the card, in writing, the name of the taxpayer
9 to whom the card was issued and a reference number, which can be used by the department to determine the
10 taxpayer's tax identification number. The name of the taxpayer to whom the card was issued must appear on
11 the electronic point of sales mechanism at the time of sale.

12 (4) A person, entity, association, or business may not at the time of purchase use a taxpayer
13 identification card other than the card issued to the person, entity, association, or business actually making the
14 purchase.

15
16 **NEW SECTION. Section 7. Report of sales tax payments to cardholders.** No later than January
17 31 of each year, the department shall mail to each taxpayer who has a taxpayer identification card issued under
18 [section 6] a notice with the total amount of sales taxes that the taxpayer paid in the prior year based upon
19 purchases in which the taxpayer identification card was presented or the taxpayer identification number was
20 provided. The notice must be mailed to the address supplied to the department by the cardholder at the time of
21 application for the card or to any change of address provided since applying for the card.

22
23 **NEW SECTION. Section 8. Direct payment of sales tax -- direct payment permits.** (1) The
24 department may issue direct payment permits to any person liable for the payment of more than \$500 a year
25 in sales tax. A person shall apply to the department for a permit on forms approved by the department. By
26 applying for a direct payment permit, the applicant acknowledges that the applicant assumes all obligations to
27 pay any sales tax due under this chapter made by the applicant as a direct payment permitholder. A direct
28 payment permit may be revoked by the department at any time upon 90 days' written notice to the permitholder.
29 A permitholder may be audited by the department.

30 (2) A direct payment permitholder shall pay any sales tax authorized under this chapter directly to the

department. The permitholder must receive a nontaxable transaction certificate, as provided in 15-68-202, using the direct payment permit as a basis for the exemption.

Section 9. Section 15-68-201, MCA, is amended to read:

"15-68-201. Nontaxable transaction certificate -- requirements. (1) A nontaxable transaction certificate executed by a buyer or lessee must be in the possession of the seller or lessor at the time that a nontaxable transaction occurs.

(2) A nontaxable transaction certificate must contain the information and be in the form prescribed by the department.

(3) Only a buyer or lessee who has registered with the department and whose seller's permit registration is valid may execute a nontaxable transaction certificate.

(4) If the seller or lessor accepts a nontaxable transaction certificate within the required time and believes in good faith that the buyer or lessee will employ the property or service transferred in a nontaxable manner, the properly executed nontaxable transaction certificate is considered conclusive evidence that the sale is nontaxable. If an incorrect claim was made with the intent to evade the payment of the sales tax, the purchaser is subject to the penalty provided in 15-68-410."

Section 10. Section 15-68-202, MCA, is amended to read:

"15-68-202. Nontaxable transaction certificate -- form. (1) The department shall provide for a uniform nontaxable transaction certificate. An electronic or digitally usable version of a nontaxable transaction certificate may also be provided. A purchaser shall use the certificate when purchasing goods or services for resale or for other nontaxable transactions.

(2) At a minimum, the certificate must provide:

(a) ~~the~~ a unique identification number of the seller's permit issued to the purchaser as provided in 15-68-404;

(b) ~~the general character of property or service sold by the purchaser in the regular course of business;~~ nature of the exemption, such as the fact that:

~~(e)(i)~~ (i) the property or service is purchased for resale;

(ii) the property or service is purchased for manufacturing;

(iii) the purchaser is authorized to make direct payments; or

1 (iv) the purchaser is an entity exempt from payment of sales tax;

2 ~~(d)(c)~~ the name and address of the purchaser; and

3 ~~(e)(d)~~ if it is a paper certificate, a signature line for the purchaser.

4 (3) The department shall adopt rules to provide procedures for application for and provision of a
5 certificate to a person engaging in business within this state ~~for renting accommodations and campgrounds prior~~
6 ~~to June 1, 2003, [the applicability date of this section] and renting vehicles prior to July 1, 2003.~~ The rules
7 adopted by the department must ensure that each person that is engaging in business within this state ~~for renting~~
8 ~~accommodations and campgrounds prior to June 1, 2003, and renting vehicles prior to July 1, 2003 [the~~
9 ~~applicability date of this section]; and~~ that has applied in a timely fashion is issued a certificate ~~for renting~~
10 ~~accommodations and campgrounds prior to June 1, 2003, and renting vehicles prior to July 1, 2003 [the~~
11 ~~applicability date of this section]."~~

12
13 **Section 11.** Section 15-68-206, MCA, is amended to read:

14 **"15-68-206. Exemption -- government agencies.** All sales by or uses by the United States or an
15 agency or instrumentality of the United States or of this state, a political subdivision of this state, an Indian tribe,
16 or a foreign government are exempt from the sales tax and use tax."

17
18 NEW SECTION. **Section 12. Exemption -- food products.** (1) Except as provided in subsection (2),
19 the sale or use of food and food ingredients is exempt from the sales tax and use tax.

20 (2) The sale of prepared food and food sold through vending machines is taxable, but prepared food
21 offered or delivered as part of a residential living arrangement and consumed by an individual that is party to
22 the arrangement or by patients of a health care facility is exempt from the sales tax and use tax.

23
24 NEW SECTION. **Section 13. Exemption -- medicine, drugs, and certain devices.** The following are
25 exempt from the sales tax and use tax:

26 (1) prescription drugs, over-the-counter drugs, durable medical equipment, and mobility-enhancing
27 equipment; and

28 (2) insulin, oxygen, and therapeutic and prosthetic devices.

29
30 NEW SECTION. **Section 14. Exemption -- motor fuel.** (1) The sale and use of gasoline, ethanol

1 blended for fuel, and special fuel, including natural gas or propane, upon which tax has been paid or will be paid
2 under Title 15, chapter 70, are exempt from the sales tax and use tax.

3 (2) The sale and use of special fuel that is exempt from taxation under Title 15, chapter 70, part 3, are
4 exempt from the sales tax and use tax.

5
6 **NEW SECTION. Section 15. Exemption -- insurance premiums.** The premiums of an insurance
7 company, a health service corporation, a health maintenance organization, or a fraternal benefit society or of
8 a producer of the company, corporation, organization, or society are exempt from the sales tax.

9
10 **NEW SECTION. Section 16. Exemption -- dividends and interest.** The following are exempt from
11 the sales tax:

- 12 (1) interest on money loaned or deposited;
13 (2) dividends or interest from stocks, bonds, or securities;
14 (3) proceeds from the sale of stocks, bonds, or securities; and
15 (4) commissions or fees derived from the business of buying, selling, or promoting any stock, bond, or
16 security.

17
18 **Section 17.** Section 15-68-207, MCA, is amended to read:

19 **"15-68-207. Exemption -- isolated or occasional sale or lease of property.** The isolated or
20 occasional sale or lease of property by a person that is not regularly engaged in or that does not claim to be
21 engaged in the business of selling or leasing the same or a similar property is exempt from the sales tax and
22 use tax. Occasional sales include sales that are occasional but not continuous and that are made for the purpose
23 of fundraising by nonprofit organizations, including but not limited to youth clubs, service clubs, and fraternal
24 organizations."

25
26 **NEW SECTION. Section 18. Exemption -- personal effects.** The use by an individual of personal
27 or household effects brought into the state for the establishment by the individual of an initial residence within
28 this state and the use of property brought into the state by a nonresident for the nonresident's own nonbusiness
29 use while temporarily within this state are exempt from the use tax.

1 **NEW SECTION. Section 19. Exemption -- feed -- fertilizers.** The sale or use of the following when
2 used in the course of an agricultural business is exempt from the sales tax and use tax:

- 3 (1) feed for livestock;
4 (2) semen, ova, and embryos used in animal husbandry;
5 (3) seeds, roots, and bulbs;
6 (4) soil conditioners and fertilizers;
7 (5) insecticides, insects used to control weeds or the population of other insects, fungicides, weedicides,
8 and herbicides; and
9 (6) water for commercial irrigation.

10
11 **NEW SECTION. Section 20. Exemption -- agricultural products -- livestock feeding.** (1) (a) The
12 sale of livestock, live poultry, unprocessed agricultural products, hides, or pelts by a grower, producer, trapper,
13 or nonprofit marketing association is exempt from the sales tax.

14 (b) A person engaged in the business of buying and selling wool or mohair or of buying and selling
15 livestock on the person's own account and without the services of a broker, auctioneer, or other agent is
16 considered a producer for the purposes of subsection (1)(a).

17 (2) Sales from feeding, pasturing, penning, handling, or training livestock prior to sale are exempt from
18 the sales tax.

19
20 **NEW SECTION. Section 21. Exemption -- minerals -- exceptions.** (1) The sale or lease of interests
21 in minerals, as defined in 15-38-103, is exempt from the sales tax and use tax.

22 (2) Except as provided in subsections (5) and (6), the sale or use of a mineral, as defined in 15-38-103,
23 is exempt from the sales tax and use tax.

24 (3) Minerals used by the producer of the minerals for purposes of exploring for, producing, or
25 transporting minerals are exempt from the sales tax and use tax, except that the exemption does not include
26 refined petroleum products.

27 (4) The sale or use of platinum and palladium, whenever refined and preserved in coins, ingots, bars,
28 or other similar forms, is exempt from the sales tax and use tax.

29 (5) Minerals used as or integrated into jewelry, art, or sculpture or used as a decorative embellishment
30 or adornment, either in their own right, in combination with other property, or after being refined, reduced,

polished, cut, faceted, or otherwise processed, are not included in the exemption provided in this section.

(6) Minerals that are used for producing energy or that are used for conversion into energy are subject to the sales tax or use tax unless the energy is produced or converted for resale as a form of energy.

NEW SECTION. Section 22. Exemption -- certain chemicals, reagents, and substances. (1) The sale or use by a person of any chemical, reagent, or other substance that is normally used or consumed in the processing of ores or petroleum, in a mill, smelter, refinery, or reduction facility, or in acidizing oil wells is exempt from the sales tax and use tax.

(2) The sale or use of explosives, blasting material, or dynamite is not exempt from the sales tax and use tax.

NEW SECTION. Section 23. Nontaxability -- sale to miner or manufacturer. (1) The sale of property to a purchaser engaged in the business of mining or manufacturing is nontaxable if:

(a) the purchaser has a nontaxable transaction certificate; and

(b) (i) the purchaser incorporates the property as an ingredient or component part of the product in the business of mining or manufacturing; or

(ii) the purchaser uses the property to extract a mineral and the property is required to be abandoned in place, in accordance with state regulations, when production of the mineral from a mine or wellhead permanently ceases.

(2) For the purposes of this section, electrical energy or electricity used or consumed by electrolytic reduction used in the reduction or refinement of ores is considered a component part of the product.

NEW SECTION. Section 24. Nontaxability -- sale or lease of real property or improvements and lease of mobile homes. (1) (a) The sale or lease of real property or improvements is nontaxable.

(b) The lease or rental of a mobile home for a period of 1 month or more is nontaxable.

(2) The inclusion of furniture or appliances furnished by the landlord or lessor as part of a leased or rented dwelling, house, mobile home, cabin, condominium, or apartment is nontaxable.

NEW SECTION. Section 25. Nontaxability -- transactions in interstate commerce -- certain property used in interstate commerce. The following are nontaxable:

(1) a transaction in interstate commerce to the extent that the imposition of the sales tax or use tax would be unlawful under the United States constitution;

(2) transmitting messages or conversations by radio when the transmissions originate from a point outside this state and are received at a point within this state; and

(3) the sale of radio or television broadcast time if the advertising message is supplied by or on behalf of a national or regional seller or an advertiser that does not have its principal place of business within this state or that is not incorporated under the laws of this state.

NEW SECTION. Section 26. Nontaxability -- sale of tangible personal property for leasing. The sale of tangible personal property, other than furniture or appliances, is nontaxable if:

(1) the sale is made to a purchaser that has a nontaxable transaction certificate;

(2) the purchaser is engaged in a business deriving more than 50% of its receipts from selling or leasing property of the type leased; and

(3) the purchaser does not use the property in any manner, other than holding it for sale or lease or selling or leasing it, either by itself or in combination with other property, in the ordinary course of business.

Section 27. Section 15-68-401, MCA, is amended to read:

"15-68-401. Seller's permit registration. (1) A person that wishes to engage in business within this state that is subject to this chapter shall ~~obtain~~ file with the department an application for a seller's ~~permit registration~~ before engaging in business within this state.

(2) Registration may be directly with the department or through the multistate central registration system as provided in the agreement. Sellers registered through the multistate central registration system agree to collect and remit sales taxes and use taxes for taxable Montana sales and comply with audit and compliance provisions established through the agreement.

~~(2)(3)~~ Upon an applicant's compliance with this chapter, the department shall issue to the applicant a separate, numbered seller's ~~permit registration~~ for each location in which the applicant maintains an office or other place of business within Montana. A ~~permit registration~~ is valid until revoked or suspended but is not assignable. A ~~permit registration~~ is valid only for the person in whose name it is issued and for the transaction of business at the place designated. The ~~permit registration~~ must be conspicuously displayed at all times at the place for which it is issued.

(3)(4) The department shall adopt rules to provide procedures for application for a seller's registration and a provision of a seller's permit to a person for registering sellers engaging in business within this state that is subject to this chapter ~~for renting accommodations and campgrounds prior to June 1, 2003, and renting vehicles prior to July 1, 2003~~ [the applicability date of this section]. The rules adopted by the department must ensure that each person engaging in business within this state ~~for renting accommodations and campgrounds prior to June 1, 2003, and renting vehicles prior to July 1, 2003, [the applicability date of this section]~~ has the opportunity to be registered ~~is issued a seller's permit for renting accommodations and campgrounds prior to June 1, 2003, and renting vehicles prior to July 1, 2003 [the applicability date of this section]~~. The department may adopt rules providing for seasonal ~~permits~~ registration."

Section 28. Section 15-68-402, MCA, is amended to read:

"15-68-402. ~~Permit application~~ Application for seller's registration -- requirements -- place of business -- form. (1) (a) A person that wishes to engage in the business of making retail sales or providing services in Montana that are subject to this chapter shall file with the department an application for a ~~permit~~ seller's registration. If the person has more than one location in which the person maintains an office or other place of business, an application may include multiple locations.

(b) An applicant who does not maintain an office or other place of business and who moves from place to place is considered to have only one place of business and shall attach the ~~permit~~ seller's registration to the applicant's cart, stand, truck, or other merchandising device.

(c) A vending machine operator who has more than one vending machine location is considered to have only one place of business for purposes of this section.

(2) Each person or class of persons required to file a return under this chapter, ~~other than persons with direct payment permits and certified service providers,~~ is required to file an application for a ~~permit~~ seller's registration.

(3) ~~Each~~ An application for a ~~permit~~ seller's registration ~~must~~ may be ~~on a~~ either in electronic or paper form and must be prescribed by the department, ~~and~~ The application must meet the requirements of the multistate central registration system under the agreement even if the applicant intends to make local retail sales only in Montana. The form must set forth the name under which the applicant intends to transact business, the location of the applicant's place or places of business, and other information that the department may require. The application must be filed by the owner if the owner is a natural person or by a person authorized to sign the

1 application if the owner is a corporation, partnership, limited liability company, or some other business entity."

2
3 **Section 29.** Section 15-68-405, MCA, is amended to read:

4 **"15-68-405. Revocation or suspension of permit seller's registration -- appeal.** (1) Subject to the
5 provisions of subsection (2), the department may, for reasonable cause, revoke or suspend any permit seller's
6 registration held by a person that fails to comply with the provisions of this chapter.

7 (2) The department shall provide dispute resolution on a proposed revocation or suspension pursuant
8 to 15-1-211.

9 (3) If a permit seller's registration is revoked, the department may not issue a new permit registration
10 except upon application accompanied by reasonable evidence of the intention of the applicant to comply with
11 the provisions of this chapter. The department may require security in addition to that authorized by 15-68-512
12 in an amount reasonably necessary to ensure compliance with this chapter as a condition for the issuance of
13 a new permit registration to the applicant.

14 (4) A person aggrieved by the department's final decision to revoke a permit seller's registration, as
15 provided in subsection (1), may appeal the decision to the state tax appeal board within 30 days after the date
16 on which the department issued its final decision."

17
18 **Section 30.** Section 15-68-501, MCA, is amended to read:

19 **"15-68-501. Liability for payment of tax -- security for retailer without place of business -- penalty.**

20 (1) Liability for the payment of the sales tax and use tax is not extinguished until the taxes have been paid to the
21 department.

22 (2) A retailer that does not maintain an office or other place of business within this state is liable for the
23 sales tax or use tax in accordance with this chapter and may be required to furnish adequate security, as
24 provided in 15-68-512, to ensure collection and payment of the taxes. When authorized and except as otherwise
25 provided in this chapter, the retailer is liable for the taxes upon all property sold and services provided in this
26 state in the same manner as a retailer who maintains an office or other place of business within this state. The
27 seller's permit registration provided for in 15-68-401 may be canceled at any time if the department considers
28 the security inadequate or believes that the taxes can be collected more effectively in another manner.

29 (3) An agent, canvasser, or employee of a retailer doing business within this state may not sell, solicit
30 orders for, or deliver any property or services within Montana unless the principal, employer, or retailer

possesses a seller's permit registration issued by the department. If an agent, canvasser, or employee violates the provisions of this chapter, the person is subject to a fine of not more than \$100 for each separate transaction or event."

Section 31. Section 15-68-502, MCA, is amended to read:

"15-68-502. Returns -- payment -- authority of department. (1) ~~Except as provided in subsection (2), on or before the last day of the month following the calendar quarter in which the transaction subject to the tax imposed by this chapter occurred, a return, on a form provided by the department, and payment of the tax for the preceding quarter must be filed with the department.~~ Each person engaged in business within this state or using property or services within this state that are subject to tax under this chapter shall file a return. ~~A person making retail sales at two or more places of business shall file a separate return for each separate place of business.~~ Sellers that are registered under the agreement and that use either a certified automated system or a certified service provider, as defined in the agreement in [section 36], are subject to the reporting and payment provisions of subsection (2) of this section. A person who has been issued a seasonal seller's registration shall file a return and pay the tax on the date or dates set by the department. All other sellers are subject to the reporting and payment provisions of subsection (3).

(2) (a) On or before the 20th day of each month, a return, in a form adopted by the department in conformance with the agreement, with a remittance of the tax owed for the preceding month, must be filed with the department. The filing and the remittance may be done electronically.

(b) The seller and any agent of the seller, for the purposes of reporting or paying the sales tax or use tax, are subject to the audit and accountability provisions of the agreement.

~~(2) A person who has been issued a seasonal seller's permit shall file a return and pay the tax on the date or dates set by the department.~~

(3) (a) For the purposes of the sales tax or use tax, a return must be filed by:

(i) a retailer required to collect the tax; ~~and~~

(ii) a purchaser with a direct payment permit; and

~~(ii)~~ (iii) a person that:

(A) purchases any items the storage, use, or other consumption of which is subject to the sales tax or use tax; and

(B) has not paid the tax to a retailer required to pay the tax.

1 **(b) A return must be filed with and payment must be received by the department on or before the 20th**
2 **day of each month for taxes owed for sales occurring during the preceding month. A seller that has a tax liability**
3 **that averages less than \$100 a month may report and pay the tax on a quarterly basis and shall file the return**
4 **with payment received by the department before the 20th day of the month after the end of the quarter.**

5 **(b)(c)** Each return must be authenticated by the person filing the return or by the person's agent
6 authorized in writing to file the return.

7 (4) (a) A person required to collect and pay to the department the taxes imposed by this chapter shall
8 keep records, render statements, make returns, and comply with the provisions of this chapter and the rules
9 prescribed by the department. Each return or statement must include the information required by the rules of
10 the department. **The department shall comply with the provisions of the agreement in determining reports and**
11 **records management requirements in reference to sellers that are registered under the agreement.**

12 (b) For the purpose of determining compliance with the provisions of this chapter, the department is
13 authorized to examine or cause to be examined any books, papers, records, or memoranda relevant to making
14 a determination of the amount of tax due, whether the books, papers, records, or memoranda are the property
15 of or in the possession of the person filing the return or another person. In determining compliance, the
16 department may use statistical sampling and other sampling techniques consistent with generally accepted
17 auditing standards. The department may also:

- 18 (i) require the attendance of a person having knowledge or information relevant to a return;
19 (ii) compel the production of books, papers, records, or memoranda by the person required to attend;
20 (iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is
21 or may be jeopardized because of delay;
22 (iv) take testimony on matters material to the determination; and
23 (v) administer oaths or affirmations.

24 (5) Pursuant to rules established by the department, returns may be computer-generated and
25 electronically filed."

26
27 **Section 32.** Section 15-68-505, MCA, is amended to read:

28 **"15-68-505. Credit for taxes paid on worthless accounts -- taxes paid if account collected. (1)**
29 Sales ~~taxes~~ tax paid by a person filing a return under 15-68-502 on sales found to be worthless and actually
30 deducted by the person as a bad debt for federal income tax purposes may be credited on a subsequent

1 payment of the tax.

2 (2) Bad debts may be deducted within 12 months after the month in which the bad debt has been
3 charged off for federal income tax purposes. "Charged off for federal income tax purposes" includes the charging
4 off of unpaid balances due on accounts as uncollectible or declaring as uncollectible such unpaid balance due
5 on accounts in the case of a seller who is not required to file federal income tax returns.

6 (3) If an account is subsequently collected, the sales tax must be paid on the amount collected.

7 (4) A seller may obtain a refund of tax on any amount of bad debt that exceeds the amount of taxable
8 sales within a 12-month period defined by that bad debt.

9 (5) For purposes of computing a bad debt deduction or reporting a payment received on a previously
10 claimed bad debt, any payments made on a debt or account are applied first to interest, service charges, and
11 any other charges and second to the price of the property or service and sales tax on the property or service,
12 proportionally.

13 (6) If filing responsibilities have been assumed by a certified service provider, the certified service
14 provider may claim any bad debt allowance on behalf of the seller.

15 (7) If the books and records of the seller claiming the bad debt allowance support an allocation of the
16 bad debts among several states, the bad debts may be allocated among those states."

17
18 **Section 33.** Section 15-68-510, MCA, is amended to read:

19 **"15-68-510. Vendor allowance.** (1) (a) A person filing a timely return under 15-68-502 may claim a
20 ~~quarterly~~ vendor allowance for each permitted location in the amount of 5% of the tax determined to be payable
21 to the state, not to exceed \$350 a month for persons filing on a monthly basis ~~\$1,000 a quarter~~.

22 ~~(2)(b)~~ The allowance may be deducted on the return.

23 ~~(3)(c)~~ A person that files a return or payment after the due date for the return or payment may not claim
24 a vendor allowance.

25 (2) In lieu of the vendor allowance provided in subsection (1), certified service providers must receive
26 a monetary allowance determined as provided in the agreement and the sellers using the certified service
27 providers may not receive a vendor allowance. The vendor allowance must be funded entirely from sales tax
28 proceeds collected by the sellers using the certified service providers.

29 (3) In addition to the vendor allowance provided in subsection (1), a registered seller using a certified
30 automated system must receive a percentage of the tax determined to be payable to the state. The percentage

1 must be determined as provided in the agreement."

2
3 **Section 34.** Section 15-68-801, MCA, is amended to read:

4 **"15-68-801. Administration -- rules. (1)** The department shall:

5 ~~(1)~~(a) administer and enforce the provisions of this chapter;

6 ~~(2)~~(b) cause to be prepared and distributed forms and information that may be necessary to administer
7 the provisions of this chapter; and

8 ~~(3)~~(c) adopt rules that may be necessary or appropriate to administer and enforce the provisions of this
9 chapter.

10 (2) In administering the provisions of this chapter, the department shall, when applicable and not in
11 conflict with Montana law, follow the provisions of the Streamlined Sales and Use Tax Agreement adopted
12 pursuant to [sections 35 through 42]. The department shall report to the revenue and transportation interim
13 committee, provided for in 5-5-227, on:

14 (a) the operation of the Streamlined Sales and Use Tax Agreement and the benefits and costs to the
15 state of its participation; and

16 (b) changes to the Streamlined Sales and Use Tax Agreement that require changes in Montana law for
17 compliance with the agreement."

18
19 **NEW SECTION. Section 35. Uniform sales and use tax administration.** [Sections 35 through 42]
20 may be cited as the "Uniform Sales and Use Tax Administration Act".

21
22 **NEW SECTION. Section 36. Definitions.** As used in [sections 35 through 42], the following definitions
23 apply:

24 (1) "Agreement" means the Streamlined Sales and Use Tax Agreement.

25 (2) "Certified automated system" means software certified jointly by the states that are signatories to
26 the agreement to calculate the tax imposed by each jurisdiction on a transaction, to determine the amount of tax
27 to remit to the appropriate state, and to maintain a record of the transaction.

28 (3) "Certified service provider" means an agent certified jointly by the states that are signatories to the
29 agreement to perform all of the seller's sales tax functions.

30 (4) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited

liability partnership, corporation, or any other legal entity.

(5) "Sales tax" means the tax levied under 15-68-102.

(6) "Seller" means a person making sales, leases, or rentals of personal property.

(7) "State" means any state of the United States and the District of Columbia.

(8) "Use tax" means the tax levied under 15-68-102.

NEW SECTION. Section 37. Authority to enter agreement. (1) The department is authorized and directed to enter into the agreement with one or more states to simplify and modernize sales tax and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the department is authorized to act jointly with other states that are signatories to the agreement to establish standards for certification of certified service providers and a certified automated system and to establish performance standards for multistate sellers through a multistate central registration system.

(2) The department is further authorized to take other actions reasonably required to implement the provisions of [sections 35 through 42]. Other actions authorized by this section include but are not limited to the adoption of rules and the joint procurement, with other signatories states, of goods and services in furtherance of the agreement.

(3) The department or the department's designee is authorized to represent this state before the other states that are signatories to the agreement.

NEW SECTION. Section 38. Relationship to state law. A provision of the agreement, in whole or in part, does not invalidate or amend any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state. Implementation of any condition of the agreement within this state, whether adopted before, at, or after this state becomes a signatory to the agreement, must be by the action of this state.

NEW SECTION. Section 39. Agreement requirements. The department may not enter into the agreement unless the agreement requires each state to abide by the following requirements:

(1) The agreement must set restrictions to achieve, over time, more uniform rates in Montana through the following:

1 (a) limiting the number of state rates;

2 (b) limiting the application of maximums on the amount of state tax that is due on a transaction;

3 (c) limiting the application of thresholds on the application of state tax.

4 (2) The agreement must establish uniform standards for the following:

5 (a) the sourcing of transactions to taxing jurisdictions;

6 (b) the administration of exempt sales;

7 (c) the allowances that a seller may take for bad debts;

8 (d) sales tax and use tax returns and remittances.

9 (3) The agreement must require states to develop and adopt uniform definitions of sales tax and use
10 tax terms. The definitions must enable a state to preserve its ability to make policy choices not inconsistent with
11 the uniform definitions.

12 (4) The agreement must provide a central, electronic registration system that allows a seller to register
13 to collect and remit sales taxes and use taxes for all signatory states.

14 (5) The agreement must provide that registration with the multistate central registration system and the
15 collection of sales taxes and use taxes in the signatory states will not be used as a factor in determining whether
16 the seller has nexus with a state for any tax.

17 (6) The agreement must provide for reduction of the burdens of complying with local sales taxes and
18 use taxes through the following:

19 (a) restricting variances between the state and local tax bases;

20 (b) requiring states to administer any sales taxes and use taxes levied by local jurisdictions within the
21 state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds
22 to, or be subject to independent audits from local taxing jurisdictions;

23 (c) restricting the frequency of changes in the local sales tax and use tax rates and setting effective
24 dates for the application of local jurisdictional boundary changes to local sales taxes and use taxes;

25 (d) providing notice of changes in local sales tax and use tax rates and of changes in the boundaries
26 of local taxing jurisdictions.

27 (7) The agreement must outline any monetary allowances that are to be provided by the states to sellers
28 or certified service providers.

29 (8) The agreement must require each state to certify compliance with the terms of the agreement prior
30 to becoming a signatory and to maintain compliance, under the laws of the state, with all provisions of the

1 agreement while a signatory.

2 (9) The agreement must require each state to adopt a uniform policy for certified service providers that
3 protects the privacy of consumers and maintains the confidentiality of tax information.

4 (10) The agreement must provide for the appointment of an advisory council of private sector
5 representatives and an advisory council of representatives of states that are not signatory states to consult with
6 in the administration of the agreement.

7
8 **NEW SECTION. Section 40. Cooperating sovereigns.** The agreement is an accord among individual
9 cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism
10 among the signatory states to establish and maintain a cooperative, simplified system for the application and
11 administration of sales taxes and use taxes under the adopted law of each state.

12
13 **NEW SECTION. Section 41. Limited binding and beneficial effect.** (1) The agreement binds and
14 inures only to the benefit of this state and the other signatory states. No person, other than a signatory state, is
15 an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law
16 of this state and the other signatory states and not by the terms of the agreement.

17 (2) Consistent with subsection (1), no person has any cause of action or defense under the agreement
18 or by virtue of this state's approval of the agreement. A person may not challenge, in any action brought under
19 any provision of law, any action or inaction by any department, agency, or other instrumentality of this state or
20 any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

21 (3) A law of this state or the application of a law of this state may not be declared invalid as to any
22 person or circumstance on the ground that the provision or application is inconsistent with the agreement.

23
24 **NEW SECTION. Section 42. Seller and third-party liability.** (1) (a) A certified service provider is the
25 agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of
26 sales taxes and use taxes. As the seller's agent, the certified service provider is liable for sales tax and use tax
27 due each signatory state on all sales transactions that it processes for the seller, except as set out in this section.

28 (b) A seller that contracts with a certified service provider is not liable to the state for sales tax or use
29 tax due on transactions processed by the certified service provider unless the seller misrepresented the type
30 of items that it sells or committed fraud. In the absence of probable cause to believe that the seller has

committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider.

(c) A seller is subject to audit for transactions not processed by the certified service provider. The signatory states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(2) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(3) A seller that has a proprietary system for determining the amount of tax due on transactions and that has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

NEW SECTION. Section 43. Credit for sales tax payments. (1) There is a credit allowed against taxes imposed by 15-30-103. The amount of the credit is the amount of the sales tax paid by the taxpayer not to exceed:

Taxable Income	Maximum
\$0 to \$20,000	\$350
20,001 to 30,000	200
30,001 to 40,000	175
40,001 to 50,000	150
50,001 or over	125

(2) The credit allowed by this section is a refundable credit. If the amount of the credit exceeds the taxpayer's liability under 15-30-103, the amount of the excess must be refunded to the taxpayer.

(3) The credit allowed by this section is not allowed to married taxpayers filing separately.

(4) By November 1 of each year, the department shall multiply the dollar amounts in subsection (1) by the inflation factor for that tax year and round the cumulative brackets to the nearest \$100. The resulting dollar amounts are effective for that tax year and must be used as the basis for determination of the credit in subsection (1).

1
2 **NEW SECTION.** **Section 44. Codification instruction.** (1) [Sections 3, 5 through 8, 12 through 16,
3 and 18 through 26] are intended to be codified as an integral part of Title 15, chapter 68, and the provisions of
4 Title 15, chapter 68, apply to [sections 3, 5 through 8, 12 through 16, and 18 through 26].

5 (2) [Sections 35 through 42] are intended to be codified as an integral part of Title 15, and the provisions
6 of Title 15 apply to [sections 35 through 42].

7 (3) [Section 43] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions
8 of Title 15, chapter 30 apply to [section 43].

9

10 **NEW SECTION.** **Section 45. Effective date.** [This act] is effective January 1, 2006.

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12 **NEW SECTION.** **Section 46. Applicability.** [This act] applies to goods sold after December 31, 2006.

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